

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

SCOTTSDALE INSURANCE  
COMPANY, an Ohio corporation,

Plaintiff,

v.

BEACHCOMBER MANAGMENT  
CRYSTAL COVE, LLC, a California  
limited liability company, et. al.,

Defendants.

RICHARD A. MARSHACK, Chapter  
7 Trustee,

Cross-Plaintiff,

v.

SCOTTSDALE INSURANCE  
COMPANY, an Ohio corporation,

Cross-Defendant.

Case No.: 8:22-cv-01300-JWH-KES\_

**~~[PROPOSED]~~ PROTECTIVE ORDER**

[Filed Concurrently with Stipulation for a  
Protective Order]

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the

1 following Stipulated Protective Order. The parties acknowledge that this Order does  
2 not confer blanket protections on all disclosures or responses to discovery and that the  
3 protection it affords from public disclosure and use extends only to the limited  
4 information or items that are entitled to confidential treatment under the applicable  
5 legal principles.

6 2. GOOD CAUSE STATEMENT

7 This action is likely to involve documentation and information relating to  
8 confidential and proprietary business practices or commercial information, including  
9 but not limited to confidential and proprietary reserve information, underwriting  
10 information and financial information, and settlement communications for which  
11 special protection from public disclosure and from use for any purpose other than  
12 prosecution of this action is warranted. Such confidential and proprietary materials  
13 and information may be otherwise unavailable to the public, or may be privileged or  
14 otherwise protected from disclosure under state or federal statutes, court rules, case  
15 decisions or common law. Accordingly, to expedite the flow of information, to  
16 facilitate the prompt resolution of disputes over confidentiality of discovery materials,  
17 to adequately protect information the parties are entitled to keep confidential, to ensure  
18 that the parties are permitted reasonable necessary uses of such material in preparation  
19 for and in the conduct of trial, to address their handling at the end of the litigation, and  
20 serve the ends of justice, a protective order for such information is justified in this  
21 matter. It is the intent of the parties that information will not be designated as  
22 confidential for tactical reasons and that nothing be so designated without a good faith  
23 belief that it has been maintained in a confidential, non-public manner, and there is  
24 good cause why it should not be part of the public record of this case.

25 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

26 The parties further acknowledge, as set forth in Section 14.3, below, that this  
27 Stipulated Protective Order does not entitle them to file confidential information under  
28 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the

standards that will be applied when a party seeks permission from the court to file material under seal. There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a specific showing of good cause or compelling reasons with proper evidentiary support and legal justification, must be made with respect to Protected Material that a party seeks to file under seal. The parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL does not—without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should

1 include an explanation of why redaction is not feasible.

2 4. DEFINITIONS

3 4.1 Action: the above-captioned action pending in the United States District  
4 Court for the Central District of California and styled as *Scottsdale Insurance*  
5 *Company v. Beachcomber Management Crystal Cove, LLC, et al.*, Case No. 8:22-cv-  
6 01300-JWH-KES.

7 4.2 Challenging Party: a Party or Non-Party that challenges the designation  
8 of information or items under this Order.

9 4.3 “CONFIDENTIAL” Information or Items: information (regardless of  
10 how it is generated, stored or maintained) or tangible things that qualify for protection  
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
12 Statement.

13 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
14 support staff).

15 4.5 Designating Party: a Party or Non-Party that designates information or  
16 items that it produces in disclosures or in responses to discovery as  
17 “CONFIDENTIAL.”

18 4.6 Disclosure or Discovery Material: all items or information, regardless of  
19 the medium or manner in which it is generated, stored, or maintained (including,  
20 among other things, testimony, transcripts, and tangible things), that are produced or  
21 generated in disclosures or responses to discovery.

22 4.7 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
24 expert witness or as a consultant in this Action.

25 4.8 House Counsel: attorneys who are employees of a party to this Action.  
26 House Counsel does not include Outside Counsel of Record or any other outside  
27 counsel.

28 4.9 Non-Party: any natural person, partnership, corporation, association or

1 other legal entity not named as a Party to this action.

2 4.10 Outside Counsel of Record: attorneys who are not employees of a party  
3 to this Action but are retained to represent or advise a party to this Action and have  
4 appeared in this Action on behalf of that party or are affiliated with a law firm that has  
5 appeared on behalf of that party, and includes support staff.

6 4.11 Party: any party to this Action, including all of its officers, directors,  
7 employees, consultants, retained experts, and Outside Counsel of Record (and their  
8 support staffs).

9 4.12 Producing Party: a Party or Non-Party that produces Disclosure or  
10 Discovery Material in this Action.

11 4.13 Professional Vendors: persons or entities that provide litigation support  
12 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
13 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
14 their employees and subcontractors.

15 4.14 Protected Material: any Disclosure or Discovery Material that is  
16 designated as "CONFIDENTIAL."

17 4.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
18 from a Producing Party.

19 5. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected  
21 Material (as defined above), but also (1) any information copied or extracted from  
22 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
23 Material; and (3) any testimony, conversations, or presentations by Parties or their  
24 Counsel that might reveal Protected Material.

25 Any use of Protected Material at trial shall be governed by the orders of the trial  
26 judge. This Order does not govern the use of Protected Material at trial.

27 6. DURATION

28 Once a case proceeds to trial, information that was designated as

CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

## 7. DESIGNATING PROTECTED MATERIAL

### 7.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

7.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the

1 material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic  
4 documents, but excluding transcripts of depositions or other pretrial or trial  
5 proceedings), that the Producing Party affix at a minimum, the legend  
6 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
7 contains protected material. If only a portion of the material on a page qualifies for  
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
9 by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection  
11 need not designate them for protection until after the inspecting Party has indicated  
12 which documents it would like copied and produced. During the inspection and before  
13 the designation, all of the material made available for inspection shall be deemed  
14 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
15 copied and produced, the Producing Party must determine which documents, or  
16 portions thereof, qualify for protection under this Order. Then, before producing the  
17 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to  
18 each page that contains Protected Material. If only a portion of the material on a page  
19 qualifies for protection, the Producing Party also must clearly identify the protected  
20 portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in depositions, either that the Designating Party  
22 identifies the Disclosure or Discovery Material on the record, before the close of the  
23 deposition all protected testimony, or within fifteen (15) days of receipt of the  
24 deposition transcript, whichever is later. During the first fifteen (15) days after receipt  
25 of the deposition transcript, the deposition transcript shall be deemed  
26 “CONFIDENTIAL.”

27 (c) for information produced in some form other than documentary and  
28 for any other tangible items, that the Producing Party affix in a prominent place on the



1 exterior of the container or containers in which the information is stored the legend  
 2 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
 3 protection, the Producing Party, to the extent practicable, shall identify the protected  
 4 portion(s).

5 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 6 failure to designate qualified information or items does not, standing alone, waive the  
 7 Designating Party’s right to secure protection under this Order for such material.  
 8 Upon timely correction of a designation, the Receiving Party must make reasonable  
 9 efforts to assure that the material is treated in accordance with the provisions of this  
 10 Order.

# 11 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 8.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 13 designation of confidentiality at any time that is consistent with the Court’s Scheduling  
 14 Order.

15 8.2 Meet and Confer. The Challenging Party shall initiate the dispute  
 16 resolution process under Local Rule 37.1 et seq.

17 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
 18 joint stipulation pursuant to Local Rule 37-2.

19 8.4 The burden of persuasion in any such challenge proceeding shall be on the  
 20 Designating Party. Frivolous challenges, and those made for an improper purpose  
 21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
 22 expose the Challenging Party to sanctions. Unless the Designating Party has waived or  
 23 withdrawn the confidentiality designation, all parties shall continue to afford the  
 24 material in question the level of protection to which it is entitled under the Producing  
 25 Party’s designation until the Court rules on the challenge.

# 26 9. ACCESS TO AND USE OF PROTECTED MATERIAL

27 9.1 Basic Principles. A Receiving Party may use Protected Material that is  
 28 disclosed or produced by another Party or by a Non-Party in connection with this



1 Action only for prosecuting, defending or attempting to settle this Action. Such  
 2 Protected Material may be disclosed only to the categories of persons and under the  
 3 conditions described in this Order. When the Action has been terminated, a Receiving  
 4 Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a  
 6 location and in a secure manner that ensures that access is limited to the persons  
 7 authorized under this Order.

8 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
 9 otherwise ordered by the court or permitted in writing by the Designating Party, a  
 10 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
 11 only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
 13 well as employees of said Outside Counsel of Record to whom it is reasonably  
 14 necessary to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel) of  
 16 the Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom  
 18 disclosure is reasonably necessary for this Action and who have signed the  
 19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional  
 23 Vendors to whom disclosure is reasonably necessary for this Action and who have  
 24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a  
 26 custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
 28 Action to whom disclosure is reasonably necessary provided: (1) the deposing party

1 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
 2 not be permitted to keep any confidential information unless they sign the  
 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
 4 by the Designating Party or ordered by the court. Pages of transcribed deposition  
 5 testimony or exhibits to depositions that reveal Protected Material may be separately  
 6 bound by the court reporter and may not be disclosed to anyone except as permitted  
 7 under this Stipulated Protective Order;

8 (i) any mediators or settlement officers and their supporting personnel,  
 9 mutually agreed upon by any of the parties engaged in settlement discussions;

10 (j) the Receiving Party’s auditors, insurers, reinsurers, insurance  
 11 representatives, and regulators of the Parties to whom disclosure is reasonably  
 12 necessary for this Action; and

13 (k) any other person as to whom the Producing Party agrees in writing.

14 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
 15 PRODUCED IN OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation that  
 17 compels disclosure of any information or items designated in this Action as  
 18 “CONFIDENTIAL,” that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification  
 20 shall include a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order  
 22 to issue in the other litigation that some or all of the material covered by the subpoena  
 23 or order is subject to this Protective Order. Such notification shall include a copy of  
 24 this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be  
 26 pursued by the Designating Party whose Protected Material may be affected. If the  
 27 Designating Party timely seeks a protective order, the Party served with the subpoena  
 28 or court order shall not produce any information designated in this action as

1 “CONFIDENTIAL” before a determination by the court from which the subpoena or  
2 order issued, unless the Party has obtained the Designating Party’s permission. The  
3 Designating Party shall bear the burden and expense of seeking protection in that court  
4 of its confidential material and nothing in these provisions should be construed as  
5 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
6 directive from another court.

7 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced by a  
10 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
11 produced by Non-Parties in connection with this litigation is protected by the remedies  
12 and relief provided by this Order. Nothing in these provisions should be construed as  
13 prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to  
15 produce a Non-Party’s confidential information in its possession, and the Party is  
16 subject to an agreement with the Non-Party not to produce the Non-Party’s  
17 confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-  
19 Party that some or all of the information requested is subject to a confidentiality  
20 agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated  
22 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
23 specific description of the information requested; and

24 (3) make the information requested available for inspection by the  
25 Non-Party, if requested.

26 (c) If the Non-Party fails to seek a protective order from this court within  
27 14 days of receiving the notice and accompanying information, the Receiving Party  
28 may produce the Non-Party’s confidential information responsive to the discovery

1 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
2 produce any information in its possession or control that is subject to the  
3 confidentiality agreement with the Non-Party before a determination by the court.  
4 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
5 of seeking protection in this court of its Protected Material.

6 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8 Protected Material to any person or in any circumstance not authorized under this  
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
10 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
11 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
12 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
13 request such person or persons to execute the “Acknowledgment and Agreement to Be  
14 Bound” that is attached hereto as Exhibit A.

15 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain  
18 inadvertently produced material is subject to a claim of privilege or other protection,  
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
21 may be established in an e-discovery order that provides for production without prior  
22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
23 parties reach an agreement on the effect of disclosure of a communication or  
24 information covered by the attorney-client privilege or work product protection, the  
25 parties may incorporate their agreement in the stipulated protective order submitted to  
26 the court.

27  
28 14. MISCELLANEOUS

1           14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
2 person to seek its modification by the Court in the future.

3           14.2 Right to Assert Other Objections. By stipulating to the entry of this  
4 Protective Order, no Party waives any right it otherwise would have to object to  
5 disclosing or producing any information or item on any ground not addressed in this  
6 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
7 ground to use in evidence of any of the material covered by this Protective Order.

8           14.3 Filing Protected Material. A Party that seeks to file under seal any  
9 Protected Material must comply with Local Civil Rule 79-5. Protected Material may  
10 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
11 Protected Material at issue. If a Party's request to file Protected Material under seal is  
12 denied by the court, then the Receiving Party may file the information in the public  
13 record unless otherwise instructed by the court.

14           15. FINAL DISPOSITION

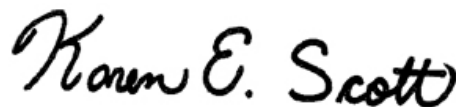
15           The obligations of the Parties under this Order shall survive the resolution of  
16 this action such that the Parties agree to maintain all Confidential Material as  
17 "CONFIDENTIAL" during the pendency of and after the conclusion of this action.

18           16. VIOLATION

19           Any violation of this Order may be punished by appropriate measures including,  
20 without limitation, contempt proceedings and/or monetary sanctions.

21  
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23  
24 DATED: March 7, 2023



25  
26 JUDGE KAREN E. SCOTT  
27 United States Magistrate Judge  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
 have read in its entirety and understand the Stipulated Protective Order that was issued  
 by the United States District Court for the Central District of California on [date] in the  
 case of *Scottsdale Insurance Company v. Beachcomber Management Crystal Cove, LLC, et al.*, Case No. 8:22-cv-01300-JWH-KES. I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and punishment in  
 the nature of contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person or  
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action. I  
 hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and  
 telephone number] as my California agent for service of process in connection with  
 this action or any proceedings related to enforcement of this Stipulated Protective  
 Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_